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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fiftieth session

SUMMARY RECORD OF THE 1194th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 7 March 1997, at 3 p.m.

Chairman: Mr. BANTON

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Ninth periodic report of Luxembourg (CERD/C/277/Add.2) (continued)

1. At the invitation of the Chairman, the members of the delegation of Luxembourg resumed their seats at the Committee table.

2. Mr. WEITZEL (Luxembourg), referring to questions asked by members of the Committee concerning paragraph 25 of the ninth periodic report, said the fact that an individual remedy brought before a Luxembourg court could not be based exclusively on the Convention did not mean that it was in breach of that instrument. National legislation was needed to specify and quantify the penalties, whether they involved sentencing or fines. That was the opinion of the Council of State adopted when the Convention had been ratified more than 30 years previously.

3. With regard to questions about the integration of foreigners, he stressed that assimilation or naturalization was by no means the goal, but merely a possibility. Everyone had the right to maintain his or her separate identity. Obviously, the policy of integration did not entail surrendering that identity. For example, second-generation Luxembourgers of Italian origin continued to maintain cultural ties with their region of origin. Luxembourg also took in many refugees who, after living in Luxembourg for five years, could apply for citizenship, while keeping their identity. In his view, what was involved was a process of change which was different in each generation. He noted that in Luxembourg, intermarriage was commonplace.

4. One question had concerned his Government's approach to the issue of racial discrimination. Luxembourg was loath to rely on prohibitions. Its policy towards immigration focused on integration, tolerance and plurality. From the point of view of civil rights, no distinction was made between Luxembourg citizens, European Union (EU) residents and non-EU residents. That approach worked indirectly to prevent acts of racism and xenophobia.

5. In response to another question, he said that the Liaison Committee for Aliens' Associations (CLAE) was an NGO representing the major immigration associations, with which the State had concluded many agreements in the areas of culture, child care, education and training. The National Aliens' Council was a body consisting of representatives of the Government, the trade unions and management and persons from minority groups elected on a basis of their proportion in the population. It had the power of initiative and could petition the Government, a right which it often exercised. Dialogue was of the essence; in a small country like Luxembourg, the Government could not remain aloof from the population.

6. On a point raised with regard to the rights of non-Europeans, he said that such persons had the same economic and social rights as anyone else if they were resident in Luxembourg and had a work permit. They could be elected to trades associations, and even had an active and passive right to vote.

Through their presence in the National Aliens' Council or trades associations, non-EU citizens thus indirectly participated in the debate on national legislation. That was the case with the recently amended law on racism and xenophobia.

7. The European Court of Justice had ruled that Luxembourg must allow EU citizens to hold posts in the civil service that were unrelated to national sovereignty, and Luxembourg was currently in the process of amending its legislation in order to comply. The reference to nationality had already been deleted from application forms for the competitive examination to enter the civil service, and complaints could be lodged against public or semi-public undertakings which continued to refer to nationality in their application forms.

8. The members of the Committee had focused their attention on article 4 of the Convention. He pointed out that in Luxembourg, an organization could only be prohibited once a court had judged that it had committed a racist act. In the discussion in Luxembourg on the recent law on xenophobia and racism, the conclusions of the Committee had been widely circulated, including among those most likely to be the targets of racial discrimination. The overwhelming opinion had been that there should be no a priori prohibition of racial discrimination. As he saw it, that was a question of method. Under existing legislation, a racist organization could be disbanded and all its members held responsible if the organization was found guilty of committing a racist act. That had a strong deterrent effect. Thus, in the view of his delegation, Luxembourg met the provisions of article 4 of the Convention.

9. Concerning paragraphs 17 and 18 of the report, he said that the reference to four persons having been booked in 1995 was incorrect; in actual fact, the matter had concerned four cases of racist graffiti. As to the 138 neo-Nazis who had been stopped from attacking the German embassy and had been arrested, they had all been non-resident aliens and had been turned over to their authorities. He noted that there had not been a single case under articles 454-456 of the Penal Code concerning the punishment of racism and discriminatory acts. That showed how uncommon such acts were and how well Luxembourg's forward-looking integration strategy was working.

10. The authorities had unfortunately been unable to apprehend the persons who had desecrated the Jewish cemetery in Esch-sur-Alzette, but there had been a massive response on the part of Government and society which had no doubt had a deterrent effect, and there had been no repetition of such acts. Regarding the cases of graffiti, which had been immediately removed, they had declined sharply, but it was very difficult to catch the culprits in the act.

11. As to whether an advertisement indicating an intention to commit a racist act was punishable, he said that that was already covered under Luxembourg's legislation. Clearly, if an employer stated in an advertisement that he did not want to hire foreigners, he would be prosecuted. The issue of pamphlets was more complex, because that also involved legislation on the press. At the current time, new legislation on the press was under discussion, and the question of racial discrimination was being taken into consideration in that regard.

12. He did not know how many persons were naturalized every year, but the numbers were probably in the hundreds. Figures on rejections were not included in statistics because the decision was taken behind closed doors, and only figures on approved applications were made public.

13. Nationality in Luxembourg was decided on the basis of a combined system of jus sanguinis and jus soli. A child could acquire nationality through adoption or if his or her parents became naturalized. Also. at the age of 18, children who had resided in Luxembourg for 10 years, or 5 years in the case of refugees or stateless children, could apply for citizenship. A child not born in Luxembourg but who went to school there could apply for citizenship at the age of 18 too.

14. With regard to Luxembourg's language system, he said that there were three official languages: the Luxembourg language, which was spoken by more than 90 per cent of the population and was a Germanic dialect, German and French. All three were spoken in the administration, and civil servants must attempt to reply to letters in the same language as that in which they had been written.

15. An effort was currently being made to compensate for the handicap experienced in the educational system by children from Romance-language countries.

16. One of the members of the Committee had asked how many persons from Portugal remained in Luxembourg. That was difficult to say, because a multicultural society was a very mobile one. As far as he knew, in 1996 5,000 Portuguese citizens had come to Luxembourg, and 16,000 had returned home.

17. Concerning educational measures, he said that all civil servants received training in the elimination of racial discrimination, and civil servants who committed racist acts were severely punished.

18. Referring to a question on education and inter-cultural affairs, he said there were several private initiatives in those areas, some of which had been jointly financed by various ministries. However, the nature of civil society was such that it was not always possible for the State to monitor every detail of activities undertaken by private entities.

19. He was pleased to report that the training of law enforcement officials had resulted in a situation in which there were very few problems in relations between the police and foreigners. As in many other societies, foreigners sometimes hesitated before approaching the authorities. In addition to the State, there were a number of organizations which sought to assist foreigners in taking the action to which they were entitled. Judicial assistance was available to all complainants and defendants, irrespective of nationality.

20. The declaration under article 14, paragraph 2 of the Convention, provided full recourse for victims of racial discrimination, and the ad hoc standing committee against discrimination, established by the Government, was currently discussing the complex effects of that declaration. There had been

no intention to limit the access of persons under Luxembourg jurisdiction to the Committee on the Elimination of Racial Discrimination. The declaration had been announced at a press conference and published in a special edition of the Journal Officiel, which had been widely distributed to bodies dealing with the subject of racism.

21. Turning to the question asked about the Integration of Aliens Act of 1993, he explained that the Act represented a package of measures which were implemented without discrimination.

22. In response to a question by Mr. van Boven, he said he could not discuss the amendment of article 8, paragraph 6, of the Convention at the present time, but promised to raise the issue with the competent officials in the Ministry concerned; he assured the Committee that he would follow up the matter. Mr. van Boven had also expressed concern that no mention had been made of the European Year against Racism. Luxembourg was in fact involved in the planned activities, and he invited proposals for his Government's consideration concerning the organization of the closing ceremony at the end of the Year.

23. Mr. YUTZIS agreed with the delegation that a vacancy announcement specifying nationality conditions for applicants should be considered racist.

24. He wondered whether the dissemination of propaganda by racist organizations fell within the ambit of the law governing the press and in that connection requested clarification of the legislative interpretation of pamphlets and other publications.

25. Mr. ABOUL-NASR said that, in his opinion, the ad hoc standing committee against racism corresponded exactly to the requirements of article 14, paragraph 2. He did not agree with Mr. Yutzis' comment about nationality requirements for certain types of jobs, as there were legitimate instances in which such requirements were relevant to the job in question.

26. Mr. YUTZIS pointed out that he had simply been quoting the words of the representative of Luxembourg.

27. Mr. van BOVEN observed that many countries had difficulties in banning organizations as a preventive measure; it was only when those organizations had systematically transgressed the law that action could be taken. Although the issue had not been resolved, the Convention took a clear line, and the Committee had taken a more mandatory stance on the matter than many States parties.

28. With reference to article 14, he noted with interest that Luxembourg had been the first country to make a declaration under both paragraphs 1 and 2 of that article. He asked about the nature of the ad hoc standing committee and whether the public was aware of its procedures. As he understood it, an applicant was obliged, in the first instance, to go before the standing committee before addressing the Committee on the Elimination of Racial Discrimination. He wondered whether Luxembourg had understood the full implications of the declaration made under paragraph 2.

29. Mr. GARVALOV asked whether the ad hoc standing committee had already received and considered petitions.

30. Mr. CHIGOVERA asked to what extent existing laws made provision for a racist organization which specifically stated in its statutes that its objective was the preservation of a particular race.

31. Mr. WEITZEL (Luxembourg) assured Mr. Yutzis that his reference to pamphlets concerned subtle cases in which there was no direct evidence of incitement to racial hatred. The fact that the question had been raised indicated that his Government needed to continue its study of the various facets of the issue.

32. He said he was somewhat surprised at the direction the discussion of article 14, paragraph 2, was taking. No petitions had as yet been brought before the standing ad hoc committee because its internal procedures had not yet been finalized. In adopting the declaration under paragraph 2, his Government had not anticipated the reaction currently being expressed in the Committee. It would welcome further feedback and would keep the Committee informed of subsequent developments.

33. On the question of the prohibition of racist organizations, current legislation made it possible to disband such organizations only a posteriori. In response to Mr. Chigovera's query, he said the publication of statutes inciting racial hatred was an offence; however, no such statutes had been published since the late 1980s.

34. Mr. DIACONU said the declaration made by Luxembourg was important for the implementation of the Convention. The principle of subsidiarity should apply in the case under discussion.

35. With reference to article 4, States parties were not required to take decisions before organizations had committed offences, but they were required to enact legislation to sanction such offences in the event that they occurred.

36. Mrs. SADIQ ALI thanked the delegation for the thoroughness with which it had responded to the main issues of interest to the Committee. She looked forward to further discussions when it submitted its tenth periodic report.

37. The delegation of Luxembourg withdrew.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-FIRST SESSION

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (agenda item 8) (A/51/482)

38. The CHAIRMAN, introducing the report of the seventh meeting of persons chairing the human rights treaty bodies (A/51/482), said that his conception of the items to be considered as a matter of priority by the chairpersons had not been reflected in the priorities addressed at the meeting itself and he would appreciate members' views in anticipation of the next meeting. It was

questionable whether the presence of the large number of representatives of United Nations bodies and specialized agencies other than the treaty bodies, listed in paragraph 6 of the report, was entirely warranted, and whether all the documents listed in paragraph 11 were relevant to the topics for discussion. The chairpersons had reviewed recent developments relating to the work of the treaty bodies they represented and it could be seen from paragraph 23 that he had drawn particular attention to the Committee's proposal of a new procedure for examining seriously overdue initial, as well as periodic reports, by States parties. Under the section "Promotion of international human rights treaties", he would have liked more attention to have been given to the question of the failure of some States to fulfil their reporting obligations and the increasing reporting burden upon States deriving from treaty bodies' requests for information, referred to in paragraph 28 of the report. The report of the independent expert, Mr. Philip Alston, on ways of enhancing the effective operation of the treaty system was awaited with keen interest.

39. Mr. BRUNI (Secretary of the Committee) informed the Committee that that report was to be issued as a document for the forthcoming session of the Commission on Human Rights, and would therefore be available to the Committee in all languages for discussion at its fifty-first session.

40. The CHAIRMAN said that the Committee should allow time in its agenda for the fifty-first session for a discussion of that report so that he could present its views at the next meeting of chairpersons in September 1997.

41. On the question of treaty bodies' external relations, the chairpersons' recommendation in paragraph 33 was a step towards ensuring continuity in the chairpersons' work between their annual meetings, as had been advocated at its sixth meeting, when Mr. Garvalov had represented the Committee. He drew attention to paragraph 37 and to the importance of information on the work of the treaty bodies now available on the Internet. The question of Secretariat support and the plans to restructure the Centre for Human Rights had taken up a great deal of time at the chairpersons' meeting. Finally, the recommendation in paragraph 62 that treaty bodies should be as specific as possible in elaborating their concluding observations was also relevant to the question of easing States parties' reporting burden. Specific indications to States parties of the kind of information required in the next report would help them in preparing their reports. He recalled that alternative suggestions for easing the reporting burden had been for States parties to submit a consolidated report to all treaty bodies, or to be asked to submit thematic reports, although he considered that to be more relevant to other treaty bodies than to the Committee.

42. Mr. GARVALOV said he was pleased to note that the Chairman had drawn attention to the Committee's new procedure for considering seriously overdue initial reports. With regard to the election of the Chairperson of the meeting, referred to in paragraph 14, he wondered why the principle of rotation had been specifically mentioned, since that principle had already been agreed upon at the sixth meeting. The reference to "any new human rights treaties" in paragraph 25 prompted him to comment that he took it to have already been agreed that existing human rights treaties were sufficient.

43. He welcomed the reference in paragraph 28 to the failure of some States to fulfil their reporting obligations, which was one of the main problems treaty bodies faced, adding that responsibility for reporting lay solely with States parties. Placing the onus for publicizing the principal international instruments on members of the treaty bodies, as was recommended in paragraph 30, overstepped the mandate of members and encroached on their independence. He agreed with the recommendation in paragraph 32 that national human rights institutions and NGOs should take a more active role in reporting on measures taken to promote knowledge of the human rights treaties. He welcomed the content of paragraph 34, and the call to the Economic and Social Council to amend the rules of the Commission on Human Rights, which amounted to enhancing the status of the treaty bodies, and of paragraph 36 concerning constructive criticism of the treaty bodies' work by NGOs. The wording of paragraph 38 was unclear; he failed to see why NGOs should be specifically invited to attend the press conferences at the end of sessions and why there should be a restriction on their participation in the dialogue.

44. The first sentence of paragraph 40 was worded rather more critically than it should have been. He, and no doubt other members, had been consulted and asked to comment on the planned restructuring of the Centre for Human Rights. With reference to paragraph 53, he asked whether the chairpersons had been informed of the agreement between the Committee and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to undertake a study on article 7 of the Convention, which was a significant example of cooperation between treaty bodies.

45. He regretted that early-warning and urgent procedures had not been given due emphasis in the report. The Committee, which had been among the first to adopt and act upon such procedures, had built up some experience which it might usefully have shared with other treaty bodies. He would also have expected more attention to have been given to strengthening direct communication between the chairpersons and the Secretary-General, inter alia, through the High Commissioner for Human Rights, as had been the explicit understanding reached at the first meeting with the Secretary-General in June 1995. He was in favour of the closest possible cooperation between bodies concerned with human rights within the United Nations system - primarily between the treaty bodies, but also with other organs, including the Security Council.

46. The CHAIRMAN explained in connection with paragraph 14 that the principle of rotation had been specifically reaffirmed because the chairpersons had provisionally departed from it. Regarding the recommendation in paragraph 30 about members' publicizing the principal international instruments, he believed that most members, jointly and severally, did that in principle. He fully endorsed what Mr. Garvalov had said about paragraph 34 and withdrew his earlier remarks.

47. Mr. BRUNI (Secretary of the Committee), explaining the background to paragraph 38, said that the traditional press conferences were held in response to the concern of journalists to have a face-to-face meeting with members of the Committee, preferably - for purely professional reasons - without the presence of others. The first sentence of the paragraph was intended to meet those concerns but at the same time those of the NGOs

themselves and of members of the treaty bodies who felt that NGOs should be able to benefit in some way from the information given to the press. Where that did not prove possible, it had been felt that NGOs should be given an opportunity, if the treaty body agreed, to participate in a similar direct dialogue with members, which explained the second sentence.

48. The CHAIRMAN said that he would be offering NGOs the opportunity to take part in a direct exchange of views, independently of the press conference, at the end of the current session.

49. On the subject of paragraph 40 concerning the plans to restructure the Centre for Human Rights, he said that continuing staff anxieties and the great difficulty experienced by the chairpersons in clarifying the issues involved had revealed the shortcomings of the consultations on restructuring plans that covered every aspect of the Centre's work. The recommendation in paragraph 53 had been suggested by a member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, a United States national participating as an observer, who had been well aware of the arrangements for a joint review of article 7. The fact that that topic did not hold the same interest for other treaty bodies, however, might explain the omission of any mention of the study now under way.

50. He endorsed the comments made by Mr. Garvalov about the omission of references to early-warning and urgent procedures and strengthening links with the Secretary-General. It had emerged from an exchange of correspondence between Ms. Corti, acting on behalf of the chairpersons, and the new Secretary-General that there might be an opportunity for a meeting in Geneva in September, at which the question of strengthening links with the Secretary-General would certainly be a priority. On the subject of cooperation among the treaty bodies, he agreed that a solution should be found, but in a way that did not add further to the calls on members' time. The system of appointing members to liaise with those of other treaty bodies had not proved successful and the current contacts between chairpersons often amounted to little more than the transmission of the respective treaty bodies' concluding observations.

51. Mr. van BOVEN endorsed the statement made by Mr. Garvalov, particularly regarding the agenda item on the prevention of human rights violations, including early-warning and urgent procedures, which had not been discussed at the meeting. That might have been due to lack of time or decline in interest in the question.

52. The sentiment expressed in paragraph 32 of the report was commendable, given the important role played by national human rights institutions, their relevance to the implementation of the Convention and the vital importance to the Committee of information provided by NGOs.

53. The restructuring of the Centre for Human Rights, mentioned in paragraph 42, was of the utmost concern in that it closely affected the work of the Committee. He also fully supported paragraph 44 of the report. Members of the Committee could not effectively prepare themselves for forthcoming sessions if they were not provided with the documents they needed in good time.

54. Paragraph 53 touched on another subject of vital importance to the effective functioning of the Committee. Cooperation with the Sub-Commission and rapporteurs and other experts appointed by the Commission on Human Rights was an integral part of the work of the Committee in that they could provide information on topics and areas of relevance to the question of racial discrimination.

55. Mr. ABOUL-NASR agreed with Mr. Garvalov and Mr. van Boven, particularly concerning the question of secretariat support. Developments in the Centre for Human Rights were completely incomprehensible. There was a lack of both continuity and resources, which had left the Centre facing its worse crisis ever.

56. The contents of the report should be taken merely as recommendations. Each human rights treaty body could take from the report the parts of relevance to its particular mandate. The report did, however, concentrate too heavily on the contribution of NGOs to the work of human rights treaty bodies. Although there was no disputing the quality of the work of those organizations, the Committee should guard against politicization and giving greater credence to information from NGOs than that submitted by reporting States. At his proposed meeting with representatives of NGOs the Chairman should act in a personal capacity, and it should be borne in mind that there was little or no representation of NGOs or regional organizations from developing countries, which was unacceptable, as was the fact that developing countries did not have access to the Internet.

57. He could not see why the question of gender perspectives had been on the agenda, unless it had been the result of pressure from NGOs.

58. Mr. VALENCIA RODRIGUEZ observed that the General Assembly had approved the Committee's procedure for considering States' initial reports when they were seriously overdue. He agreed with Mr. Aboul-Nasr that the contents of the report amounted only to recommendations.

59. Mr. AHMADU said that the Committee should make every effort to preserve its particular identity and choose from the recommendations made in the report those that were both relevant and useful.

60. It was unacceptable that essential documents were not being sent to members of the Committee in good time, if at all. That was a serious impediment to members' work. There should be a fast and efficient delivery service.

61. He agreed with Mr. Aboul-Nasr's comments on the subject of NGOs and the state of secretariat support.

62. The question of the presence in the meeting room of members of the Committee during discussions relating to their country should be decided on by the Committee or left to the individual member's discretion.

63. Mr. FERRERO COSTA voiced concern at the failure of the meeting to deal with the question of early-warning and urgent procedures, for preventing human rights violations. That should be on the agenda for the next session. The

recommendation in paragraph 25 of the report should be disregarded as it undermined State sovereignty. NGOs played a vital role in the work of the Committee and had every right to provide the Committee with any information they felt should be brought to its attention. He too would welcome clarification from the Centre for Human Rights on recent developments relating to restructuring.

64. Ms. ZOU Deci said that she, too, agreed with Mr. Aboul-Nasr on the question of the participation of NGOs, particularly as their sources of financing were not always clear.

The meeting rose at 6.05 p.m.